IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9932 of 2000
with
CIVIL APPLICATION No 854 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAHUL B MEHTA

Versus

JAMNAGAR MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 9932 of 2000
MR AJ SHASTRI for Petitioner No. 1
MR JR NANAVATI for Respondent No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the judgment and award of the Industrial Court, Rajkot in Reference [ITC] No. 7 of 1991 dated 10.12.1999 whereby the Industrial Court has partly allowed the Reference and directed the respondent Corporation to give the petitioner payscale of Tax Officer of Rs.650-1200 from 24.6.1988 to 15.9.1992 on notional basis and to give actual benefit of the pay-scale from 16th September 1992.

2. Mr. Shastri for the petitioner has submitted that pursuant to the advertisement at Annexure 'A' the petitioner applied for the post of Tax Officer. The required experience for the said post was 3 years but there was shortage of experience of 6 months. However, as per the note in the said advertisement [page 27] it was open for the respondent Corporation to appoint candidate having deficit experience on adhoc basis and services of such candidate will be regularized after completion of the period of experience. Mr. Shastri submitted that since the petitioner was not having required experience, he was appointed on adhoc basis for 6 months pursuant to the recommendation of the Staff Selection Committee on 24th June 1985, and he completed 6 months period on 24th December 1985 and, therefore, the petitioner was entitled to regular salary from 25th December 1985.

3. Inspite of several representations right from 1.11.1985, the petitioner was not granted any benefit, and, therefore, a dispute was raised before the Deputy Labour Commissioner, and ultimately, the matter was referred to the Industrial Court on 8.1.1991. The terms of Reference is as under:

> "Rahul B Mehta, Tax Officer - whether he is entitled for grade of Rs.650-1200 from 1.11.1985 and whether he is entitled to for arrears or not".

4. The Tribunal, while giving benefit to the petitioner has considered in paragraph 12 that on the date of appointment, the petitioner has experience of 2 years and 8 months, and there was deficit of 4 months experience, which would have been completed on 1.11.1985, but since the respondent Corporation was not a commercial institution, and is a public utility service, the petitioner workman is entitled for regular salary after 3 years from the date of appointment.

5. Having heard the learned advocates and considered

the documents on record, I am of the view that the Tribunal has committed an error in arriving at the above decision, inasmuch as 3 years experience was requisite for appointment to the post in question, and not for regular salary. Reading the appointment order [page 31, annexure 'B'], it is clear that on completion of probation period, the petitioner was entitled for the regular salary. In my view, the finding of the Tribunal that the petitioner is entitled from 24.6.1988 is misconceived and is required to be modified. I therefore hold that the petitioner is entitled to regular salary from 24.12.1985.

6. Since the petitioner has approached the Industrial Court and the matter was referred only on 8.1.1991, the petitioner is entitled to monetary benefit from the date of Reference i.e. 8.1.1991 but he will be given notional increments from 24.12.1988.

7. In the result, the order of the Reference Court is modified to the extent that the petitioner will be given regular salary of Tax Officer in the original pay-scale of 650-1200 w.e.f. 24.12.1985, and from 24.12.1985 to 7.1.1991, the petitioner will be given notional benefit, and from 8.1.1991 the petitioner will be entitled to actual benefits and all arrears accordingly. The respondent is directed to pay the arrears within a period of four months from the date of receipt of this order.

Rule made absolute accordingly. No order as to costs.

In view of this, C.A. 854/2003 disposed of.

mathew [K.S.JHAVERI, J.]